IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 201
IB-79/ND/2022

IN THE MATTER OF:

Jumbo Chemical and Allied Industries Private Limited
D-42, First Floor, Part-I,
South Extension, New Delhi-110049 **... Applicant/Financial Creditor**

Versus

Arjun Industries Limited
C-9/9366, Vasant Kunj,
New Delhi-110070 **... Respondent/Corporate Debtor**

Under Section: 7 of IBC, 2016

Order delivered on 22.02.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant	:	Mr. Ramji Srinivasan, Sr. Adv. with Adv. Abhishek Anand, Adv. Karan Kohli, Adv. Krishna Sharma, Adv. Kartik Pandey, Adv. Namrata
For the Respondent	:	Adv. Abhishek Singh

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

As is not disputed by the parties, on 11.09.1996 the IDBI a creditor sanctioned a rupee term loan to the Respondent company viz., Rs. 367 lakhs for setting up a 100% Export Oriented Unit. IDBI also sanctioned a Foreign Currency Loan of DM779105 equivalent to Rs. 183 lakhs at the rate of exchange prevalent, to the CD. It was on 07.10.1996 when the Rupee Term Loan Agreement was entered into between the parties viz., the IDBI and the CD. The IDBI disbursed sum of Rs. 451.8 lakhs in terms of the loan agreements.

2. After the aforementioned two transactions, again on 06.11.1996, the IDBI and the Respondent company entered into another Foreign Currency Loan Agreement.

3. It is the case of the Petitioner that the Respondent company failed and neglected to maintain the financial discipline and IDBI had to issue recall notice dated 10.06.1998, calling upon it to repay the amount due to it under the loan terms agreements along with interest at the rate of 21% and 5% liquidated damages at the contractual rate.

4. On 26.06.1998 recall notice was sent to the guarantors and the guarantee clause was invoked.

5. On 01.12.1998, the Financial Creditor preferred O.A. No. 445 of 1998 before Hon'ble Debt Recovery Tribunal, Delhi for recovery of the debt of Rs. 6,19,93,815/- together with pendent lite and future interest at the contractual rate of interest. It is also a plea taken by the Petitioner that the Respondent company was delaying the proceeding by not filing their WS and the DRT passed a final order and decree in favour of the FC (IDBI).

6. The Corporate Debtor (Respondent Company) approached the Hon'ble High Court by filing a writ petition being W.P.(C) No. 3656/1999 which was disposed of in terms of the order dated 01.05.2000 and the matter was remanded back to DRT permitting the Respondent (CD) and its guarantors to file their WS by 22.05.2000. The said O.A. was dismissed by the Ld. DRT for want of prosecution, by the parties. Later the Corporate Debtor/Respondent Company approached IDBI with an offer of One Time Settlement of a sum of Rs. 225 lakhs as full and final settlement of the dues of IDBI. Nevertheless, on 31.03.2006 the IDBI entered into deed of assignment in favour of Kotak Mahindra Bank Limited. The CD made efforts to sell its immovable properties to settle the loan amount and firstly executed an agreement to sell with M/s Sun Gold Metal Pvt. Ltd. to sell the assets of the company for a sum of Rs. 6 crores only. In any case subsequently the Respondent company (CD) cancelled the agreement to sell (ibid) and entered into fresh agreement on 10.06.2006 to sell the assets to new buyer viz. M/s KCB Finance and Leasing Limited for a sum of Rs. 8.75 crore.

7. On 12.12.2006, DRT-1, Delhi was pleased to allow Kotak Mahindra Bank Limited to be substituted as party as per the prayer in IA-419/2006 for substitution in O.A. No. 445/1998 filed by the IDBI, as an Applicant.

8. The CD (Respondent Company) preferred an appeal before the DRAT Delhi in which an order dated 06.02.2007, granting stay in respect of all the proceedings pending before DRT was passed.

9. Being aggrieved by the aforementioned order passed by Ld. DRAT, the Kotak Mahindra Bank (FC) filed a writ petition viz., W.P. (C) No. 3535 of 2007 before Delhi High Court. The W.P. (C) No. 3535 of 2007 was allowed. After setting aside the order passed by the Ld. DRAT, Hon'ble High Court remanded the matter back to DRT for adjudication.

10. Later, on 16.04.2008, the Kotak Mahindra Bank Limited assigned the debt in favour of the Jumbo Chemical and Allied Industries Pvt. Ltd. i.e. Financial Creditor which has preferred the present petition. The Kotak Mahindra Bank Limited (FC) executed further deed of confirmation of the assignment of debt on 14.03.2012. The copy of confirmation deed is at Annexure-12 of the application.

11. In the year 2009 i.e. on 24.02.2009 the CD (Respondent Company) filed a Writ Petition (C) No. 5258/2008 seeking injunction qua the assignment of debt by IDBI in favour of Kotak Mahindra Bank Limited. In the said writ petition, an interim order was passed. In any case it is the plea espoused on behalf of the Petitioner that since the debt had already been assigned in favour of Kotak Mahindra Bank Limited the writ petition became infructuous and was withdrawn by the corporate debtor. The order passed by Hon'ble High Court to this effect is enclosed as Annexure-18 to the application. The order reads thus:-

> *"Learned counsel for the petitioner submits that the relief sought in this case has become infructuous. Therefore, he seeks liberty to withdraw the writ petition and urge the grounds to the extent they are available in W.P. 6557/2008.*

Liberty granted. The writ petition and the accompanying application are dismissed as withdrawn."

12. On 23.12.2010 the Financial Creditor issued a statutory notice under Section 434(1)(a) of the Companies Act, 1956 calling upon the Respondent Company to pay a sum of Rs.28,99,00,000/-. The statutory notice is placed on record as Annexure-13 to the application. The notice was replied by the corporate debtor (Respondent Company) on 14.01.2011, admitting its liability qua the debt claimed by the Financial Creditor. However, it filed W.P.(C) No. 6557/2008 seeking injunction against IDBI regarding assignment of the debt by it to third party and sought Mandamus against the IDBI for accepting one time settlement. The W.P.(C) No. 6557/2008 was dismissed on 02.02.2011, by Hon'ble High Court. The order passed by Hon'ble Single Judge of High Court was challenged before its Division Bench by way of Letters Patent Appeal-380/2011. The LPA was also dismissed by Hon'ble High Court in terms of the order dated 19.12.2011. The order is placed on record as Annexure-20 of the petition. The operative portion of the order reads thus:-

> *"11. The appeal is accordingly disposed of declaring that the observations made by the learned Single Judge in the impugned order are set aside. The writ petition filed by the appellant is dismissed, but not on the reasoning of the Single Judge but on the reasoning that the same was not maintainable in view of the consent recorded on behalf of the appellants in para 7 of the order dated 23.05.2007 disposing of the W.P. (C) No. 3535/2007.*
>
> *12. Needless to state the Debt Recovery Tribunal would take the necessary decision with reasonable dispatch.*
>
> *13. No costs."*

13. Subsequently the Financial Creditor filed Company Petition-221/2012 on 13.04.2012 for winding up of the Respondent Company. The petition was dismissed on 22.05.2014.

14. Later the Financial Creditor filed Company Appeal No. 41 of 2014 under Section 483 of Companies Act 1956 before Division Bench of Hon'ble High Court, New Delhi. In the meantime, the Rajasthan State Industrial

Development and Investment Corporation Limited (RIICO) issued show cause notice bearing No. 4868 & 4888 to Respondent Company for violation of the terms of lease deed and allotment letter qua 2 industrial plots to the Respondent Company for cancellation of the plots allotted to the Respondent Company in Industrial Area Khuskheda, Alwar, Rajasthan, on which the factory of the Respondent Company was to be established. A copy of the cancellation letter is placed on record as Annexure-14 to the application. The Kotak Mahindra Bank Limited, the assigner inquired about the status of the dues of the Respondent Company, resultantly the RIICO i.e. the Rajasthan and State Industrial Development and Investment Corporation Limited informed (Kotak Mahindra Bank Limited) that it had sent the show cause notice to the Respondent Company (CD).

15. The Financial Creditor preferred the Company Appeal No. 261/2013, challenging the order dated 22.05.2014 passed in Company Petition-221/2012. The appeal was registered as Company Appeal No. 41/2014. In any case the Division Bench after hearing the parties dismissed the appeal.

16. A meeting was held on 12.10.2018 at JLL, Gurgaon between the parties for the agreement on disinvestment of mortgaged property of the corporate debtor. Resultantly on 27.08.2019, the Financial Creditor and Respondent Company entered into a settlement agreement, whereby it was agreed between the parties to sell the mortgaged property and distribute the proceeds of sale between them. The settlement deed placed on record as Annexure-A7 of the application reads thus:-

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into at Delhi on this 27th day of August 2019

Between

M/s Arjun Industries Limited, having its registered office at 9/9366, Sector-C, Pocket-9, Vasant Kunj, New Delhi 110049, through Ms. Mausumi Bhattacharjee, authorised signatory of the company as per Board Resolution dt. 26th August, 2019 (hereinafter referred to as First Party).

And

M/s Jumbo Chemicals and Allied Industries Private Limited, having its registered office at D-42, First Floor, South Extension -1, New Delhi 110049, through Mr. Shailendra Kumar Singhal, authorised signatory of the company as per Board Resolution dt 15/4/18th ~~August, 2019~~ (hereinafter referred to as SecondParty).

The expression First Party and Second Party,unless repugnant to the context or meaning thereof, be deemed to mean and include their heirs, legal representatives, successors-in-interest and assigns.

WHEREASthe First Party on 07.10.1996 entered into a Rupee Term Loan Agreement with IDBI and further, entered into a Foreign Currency Loan Agreement dated 06.11.1996.

WHEREAS, the plots bearing No. SP3-11(B) 1 & 2 situated at situated at Khuskhera Industrial Area, Khuskhera, District Alwar, Rajasthan **owned by the First Party**, were mortgaged with IDBI Bank vide letter dated 11.10.1996.

WHEREAS, the bank alleged that the First Party defaulted in repayment of the loan under both the aforesaid loan agreements and arbitrarily vide recall notice dated 10.06.1998, IDBI called upon the First Party to pay the amount due to it along with interest accrued thereon. By a notice dated 26.06.1998, IDBI invoked the guarantee clause and called upon the guarantors to liquidate the dues of the First Party. Thereafter, IDBI filed OA No.445/1998 before the Debt Recovery Tribunal, New Delhi for recovery of loan. ~~The First Party has filed counter claim raising various grounds and the same is still pending before the Debt Recovery Tribunal.~~ Any case pending with any Authority will be withdrawn by concerned Par

WHEREAS, IDBI assigned the aforesaid debt in favour of Kotak Mahindra Bank by an Assignment Deed dated 31.03.2006.

WHEREAS, Kotak Mahindra Bank, further, assigned the aforesaid debt in favour of Second Party, as per Assignment Deed dt. 16.04.2008.

WHEREAS, both the parties, having dealt with various rounds of litigation at various Forums and a substantial period has already passed, without reaching to a logical and conclusive end.

AND WHEREAS, now the parties herein to buy peace are desirous of amicably settling the disputes and differences between themon the following terms and condition:

THE PRESENT SETTLEMENT WITTNESSETH:

1. The First & Second, both parties have agreed to sell Property bearing No.SP3-11(B) 1 & 2, Khuskhera Industrial Area, Khuskhera, District Alwar, Rajasthan; by executing a tripartite agreement with the proposed buyer at a mutually decided price.

2. The parties herein have agreed to distribute the sale proceeds in two equal proportions. It is further agreed that both the parties would sell the property as early as possible and both parties would render all assistance for the sale of the captioned property.

3. That the parties have further agreed to share/bear all expenses/dues/taxes both direct and indirect taxes/payments to vendors etc., in equal proportion in their endeavor to sell the captioned property, Sale Proceeds will be distributed equally and both Parties will be lia[illegible] for their income [illegible]

For ARJUN INDUSTRIES LTD.

4. The parties further agree to sell all machines and equipment installed in the captioned property and distributes the sale proceeds equally.

5. The parties further agree to clear all dues pertaining to RIICO/CUSTOMS & EXCISE and expenditure incurred in obtaining NOC from RIICO/CUSTOMS & EXCISE. The expenditure already incurred and will be incurred thereon will be borne by the parties herein in equal proportions.

6. Both the party will equally do effort to clear all hassles in respect of transfer the captioned property in favour of third party.

The parties agree and undertake to strictlyfollow/implement the aforesaid terms and condition.

IN WITNESS WHEREOF the parties hereto have executed this Deed of Settlement on the day, month and year first above mentioned in the presence of the following witnesses.

For ARJUN INDUS[illegible]

Director

(FIRST PARTY)

For Jumbo Chemical & All[illegible]

(SECOND PARTY)

Witnesses:

1. Sangeeta Bhatia
C-9/9330, Vasant Kunj
New Delhi

2. Prakhar Singhal
F-296, RIICO Chowk
Bhiwadi

TRUE [illegible]

17. However on 26.07.2021 the Respondent Company sent an e-mail cancelling the settlement agreement. The e-mail reads thus:-

Fw: letter of cancellation

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s.k. Singhal <singhalsk@ymail.com>
Mon 2/21/2022 11:07 AM
To: Saurabh Kalia <saurabhkalia@hotmail.com>; Siddharth Tandon <siddharth@sastralegal.com>

pfa.
Shailendra Kumar Singhal
F-296(C),RIICO CHOWK,
BHIWADI (Raj)
Cell - +91 9314013765

----- Forwarded message -----
From: Mausumi Bhattacharjee <mbvk.67@gmail.com>
To: "singhalsk@ymail.com" <singhalsk@ymail.com>
Sent: Monday, 26 July, 2021, 03:54:27 pm IST
Subject: letter of cancellation

Sir,

This has reference to the settlement agreement dated 27th August, 2019 entered between M/S ARJUN INDUSTRIES LIMITED AND JUMBO CHEMICALS AND ALLIED INDUSTRIES PRIVATE LIMITED.
IN this regard, it is informed that your Company i.e., M/s Jumbo Chemicals and Allied Industries Private Limited was struck off and not in existence. This fact has been concealed by you for reasons best known to you.

The agreement between us was that the property belonging to my Company i.e., M/s Arjun Industries would be sold as early as possible, thus time was an essential criteria OF THE AGREEMENT. It is close to two years now, nothing has moved as desired by us in the agreement.
You have not taken any effort to sell the property or have not extended cooperation to sell the property at Kushkera, as agreed by us.
Furthermore, you are not willing to share the expenses in equal proportions that have been incurred by me in relation to the property. Number of times, you were called upon to come forward for discussion and settlement of accounts and expenses related to the company. Similarly, you are not coming forward to interact with RIICO and other agencies to sort the pending matters. As a result, I am forced to do all the interactions, engaging Advocate and liasioning work with various agencies etc.

In view of the above, I am forced to cancel the agreement dated 27th August, 2019, forthwith, entered between M/s Arjun Industries Limited and M/s Jumbo Chemicals & Allied Industries Private Limited.

Regards.
Mausumi Bhattacharjee
For Arjun Industries ltd

18. Financial Creditor replied to e-mail (ibid). The reply placed on record at Page No. 147-150 of the petition reads thus:-

Jumbo Chemical And Allied Industries Pvt. Ltd.
F-296 (C), First Floor, RIICO Chowk, Bhiwadi-301019
e: prakharsinghal@yahoo.co.in ; m: 9314013765
CIN: U74899DL1978PTC009105

Dated: 04.08.2021

To,
Ms. Mausmi Bhattacharjee
Arjun Industries Ltd.
9/9366, Sector-C,
Pocket 9, Vasant Kunj
New Delhi-110 070

Sub: **Inability to settle the loan amount as per Settlement agreement dated 27.08.2019 and Illegal actions being taken by Arjun Industries Ltd. to alienate the immovable property without our knowledge, to escape the liability to repay the Loan to Jumbo Chemical and Allied Industries Pvt. Ltd. (Assignee of the lender)**

Dear Madam,

This has reference to your email dated 26.07.2021 wherein, you have allegedly cancelled the Settlement Agreement dated 27.08.2019. Bare perusal of the letter shows that the same has been written with malafide intentions and oblique motive. The grounds taken in the said letter are not only baseless, but contrary to records.

Please appreciate that Jumbo Chemical and Allied Industries Ltd. was struck off by Registrar of Companies. Thereafter, the management had filed the petition u/s 252 of the Companies Act and the company is active, fully functional and much in existence. The name of the company was restored in the register of the ROC, as if its name of the company had not been struck off, as per judgement of Hon'ble NCLT in this regard. The ground is also baseless as even on the date of your letter, the company is active and the same is reflected on the website of the Ministry of Corporate Affairs. Needless to say during the said period there is no communication by you w.r.t. the agreement, which itself shows the said ground is completely baseless.

As regards the terms & conditions of the aforementioned Agreement, we are always willing to abide by the terms & conditions of the same and have asked you on several occasions to resolve the issues, if any. However, you failed to repay a single penny and to respond us satisfactorily during the past years.

It is also pertinent to state that we have made several attempts time and again to give effect to the said Agreement by meeting and communicating with you from time to time. Even we co-operated you to deal with RIICO etc. However, you did not update us about the developments and latest status of your dispute/ litigation with RIICO Ltd. Despite all this, you have sent the email for alleged cancellation of Settlement Agreement dated 27.08.2019 without any basis and the same is merely an afterthought with a malafide intention to further delay repayment of your loan.

Madam, you know well that the property sold earlier also by you, to many buyers from time-to-time, in spite of Status-Quo order of the DRT and that too without prior approval of the lender; has landed up the same in mess and long litigations. The Property sold by you to M/s Sungold Metal Pvt. Ltd. and subsequently sold to M/s KCB Finance & Leasing Ltd. due to getting a higher amount than the earlier buyer in an illegal manner, in spite of Status-Quo order of the DRT, Delhi and that too without prior approval of the lender. These unlawful sales of mortgaged immovable property from time-to-time, caused litigations on various platforms, i.e., Local Court, Police Department, DRT and DRAT and could not reach to a conclusive end.

After 3 failed OTS and 3 failed sales of the property of the company, you again sold the property to M/s Godrej Properties Ltd. on 29.08.2018, without our prior approval, in terms of the loan agreement executed by your company. When the same came to our notice due to the public notice published by the proposed buyer, we lodged our objection for the same, by our letter dated 01.10.2018.

As a consequence of the above, we had a joint meeting at the office of JLL, Gurgaon. The meeting dated 12.10.2018 was also attended by the representatives of JLL, Gurgaon. In the meeting, we reached to an understanding to settle the loan amount and recorded the minutes of the meeting for the same.

Since you owe an amount of Rs.28.99 crores with further interest etc. till the date of payment in terms of the Assignment Deed dated 16.04.2008, time and again you make several attempts to escape the same. Also, we are surprised and astonished to learn the fact that you have misrepresented the amount of debt in the Financial Statements for the Financial year ended 31.03.2020 of Arjun Industries Ltd.

It has come to our notice that you have mentioned a reduced loan amount of Rs. 250.00 lakhs in your Balance sheet, on the manipulated pretext of OTS amount offered by IDBI to you and our winding-up Co.Petition No. 221/2012, decided on 22.05.2014 by the Hon'ble High Court at Delhi.

You know well that the winding-up petition was filed as your company was not solvent enough to repay the loan amount **due to erosion of more than 100% of your Net-worth** and filing of application by your company with BIFR, in terms of notice/ minutes of Company's General Meeting, in this regard.

You know well that we confined our debt to an amount of Rs. 250.00 lakhs and interest thereon from the date of the offer of OTS, **for the purpose of Winding-up petition only.** (Refer para no.12 of the judgement dated 22.05.2014). The Hon'ble High Court of Delhi also clarified that "neither this order nor anything stated during the present proceedings should be construed to mean that the petitioner has confined its claim only to a sum of Rs. 250 lakhs and interest thereon ". This petition was dismissed due to your submission about the pendency of the case at DRT, Delhi. Our appeal for winding-up of your company, in DB was dismissed and our Special Leave Petition was not admitted for consideration by the Hon'ble Supreme Court due to your claim about the pendency of the case at DRT, Delhi. As per the contents of your last audited Balance Sheet, the case was still pending for final decision.

It appears that you have not disclosed above facts and information to your Chartered Accountant Mr. Naresh K Aggarwal of M/s Arun Naresh & Co., New Delhi for properly mentioning in the audited balance sheet of the company.

We have already informed you earlier also that you have changed the management and major shareholding without prior consent of the secured creditor from time-to-time, in violation of the terms of the loan agreement and it has also come to our knowledge that you have transferred majority shares of earlier management (Khandelwal family) and other share holders, without any monetary consideration, in an illegal manner, from time to time. Besides, some of the Hypothecated Assets are also missing from the company site. This all is in contrast with the various provisions of the Loan Agreement. The loan agreement is binding on the borrower and the lenders and is in force till all the monies due and payable under this agreement are fully paid off, as per the terms and conditions of the loan agreement.

We also appointed our nominee director by our letter dated 01.10.2018, as per the terms and conditions of the loan agreement. You were advised to inform the nominee director to attend periodical board meetings of the company, but you are not adhering the same also.

You have committed breach of terms and conditions of the aforementioned Agreements. Further, you are involved in illegal activities to alienate the immovable property of the company, in order to escape the liability to repay the loan amount to Jumbo Chemical and Allied Industries Pvt. Ltd. including but not limited to numerous attempts of selling the mortgaged property to the Third Party without the knowledge and prior consent of Jumbo Chemical and Allied Industries Limited.

Further as a matter of fact and record, you are informed that we have published a public notice dated 30.7.2021 in Dainik Bhaskar and The Statesman, stating that any transaction pertaining to sale of the aforesaid property to any third party without the knowledge or approval of Jumbo Chemical and Allied Industries Pvt. Ltd. shall be considered illegal and void.

We would like to request you to fulfill the terms and conditions of not only the aforesaid Settlement Agreement but also of the previous Agreements.

Needless to say that any wrongful activity committed by you w.r.t sale of the mortgaged property without the knowledge of the undersigned or otherwise not in accordance with law shall be void and illegal.

Thanking You

Yours sincerely

For Jumbo Chemical and Allied Industries Pvt. Ltd.

Shailendra Kumar Singhal

19. Finally, the Financial Creditor filed a petition under Section 7 of IBC 2016 before this Tribunal. In the application, the date of default alleged was 26.07.2021. The application came up for hearing before this Adjudicating Authority on 06.06.2022 and was dismissed on the ground of limitation. Para 17 to 20 of the aforementioned order reads thus:-

> *"17. On perusal of the dates and events referred to supra, we observe that it is not the case of the Applicant that the Applicant has filed this application after the disposal of the first application filed by the IDBI being O.A. No. 445 of 1998 before the Debt Recovery Tribunal as that application is still pending. The claim of the Applicant is that it had entered into a settlement agreement with the Corporate Debtor on 27.08.2019 and that settlement agreement was cancelled by the Corporate Debtor vide email dated 26.07.2021 and therefore, the*

cause of action arose on the date, when the settlement agreement was cancelled by the Corporate Debtor.

18. Before considering these submissions, we would like to refer to another date as referred the Applicant by filling additional affidavit. On perusal of that, we observe that on 23.12.2010, the Petitioner had issued a statutory notice under Section 434 (1)(a) of the Companies Act 1956 and according to the Petitioner, the Respondent Company vide its reply dated 14.01.2011 had admitted its liability, therefore, a cause of action for this Applicant, who stepped into the shoes of the IDBI on the basis of assignment, arose on 23.12.2010 or 14.01.2011, when the liability was admitted by the Corporate Debtor.

19. We further observe that after 14.01.2011 and before the date of settlement arrival between the parties on 27.08.2019, there was no acknowledgement of debt on the part of the Corporate Debtor, therefore, the settlement agreement was made much after the expiry of period of 3 years, when the acknowledgement of debt was made by the Respondent. Therefore, we are unable to accept the contention of the Applicant that cause of action arose only when the deed of settlement was cancelled on 25.07.2021 because that deed of settlement was made much after the period of expiry of the limitation.

20. Apart, from that, we also notice that the loan was recalled by the IDBI on 26.08.1998, whereas the deed of assignment was executed on 31.03.2006, much after the period of limitation, therefore, we are unable to accept the contention of the Applicant that cause of action arose on 26.07.2021. Hence, we are of the considered view the present application is barred by limitation."

20. The Financial Creditor assailed the aforementioned order before Hon'ble NCLAT, by filing Company Appeal (AT) (Ins) No. 948 of 2022. Having considered the rival submissions of the parties, Hon'ble NCLAT quashed the order (ibid) passed by this Tribunal and remitted the matter back for fresh adjudication. The corporate debtor was given 3 weeks' time to file its reply. As can be seen from the order passed in appeal, Hon'ble NCLAT examined the factual position extensively. Though these are paras 20, 21, 23 & 29 of the order passed by Hon'ble NCLAT which are material. Nevertheless, it would not be out of place to take note of para 2 of the Judgment passed by Hon'ble NCLAT which take note of the entire factual development in the matter. The para 2, 20 to 24 & 29 of the Judgment dated 18.09.2023 passed by Hon'ble NCLAT reads thus:-

"2. Brief facts of the case giving rise to this Appeal are as follows:

- *The Corporate Debtor-Arjun Industries Limited was sanctioned a Rupee Term Loan by the Industrial Development Bank of India (IDBI in short) on 11.09.1996. IDBI disbursed an amount of Rs. 367 Lakhs. IDBI also entered into another Foreign Currency Loan Agreement with Corporate Debtor sanctioning Rs. 183 Lakhs.*
- *After availing the above credit facilities from IDBI, the Respondent Company failed and neglected to make the payment. A legal notice dated 10th June, 1998 was given by the IDBI.*
- *IDBI filed Original Application being O.A. No. 445/1998 before the Debt Recovery Tribunal, Delhi (DRT in short) for recovery of amount of Rs. 6,19,93,815/- together with pendente lite and future interest.*
- *During pendency of the O.A. before the DRT, the Corporate Debtor approached the IDBI offering a One-Time Settlement for a sum of Rs. 225 Lakhs. IDBI asked the Corporate Debtor to increase the amount to Rs. 250 Lakhs out of which Rs. 225 Lakhs was to be paid by a particular date in June, 2006.*
- *The amount being not paid by the Corporate Debtor, the OTS was not implemented.*
- *IDBI assigned the debt to Kotak Mahindra Bank Limited on 31st March, 2006. After assignment, Kotak Mahindra Bank Limited was substituted in O.A. No. 445 of 1998 filed by the IDBI as an Applicant. On 16.04.2008, Kotak Mahindra Bank Limited assigned the debt in favour of the Appellant-Company -Jumbo Chemicals and Allied Industries Pvt. Ltd. by registered deed on assignment.*
- *The Corporate Debtor filed a writ petition in the High Court restraining the assignment which was dismissed.*
- *Appellant issued a statutory notice under Section 433 and 434 of the Companies Act, 1956 to the Corporate Debtor to pay a sum of Rs. 28,99,00,000/- as on 31st December, 2005. Respondent Company sent a Reply dated 14.01.2011 opposing the claim of the Appellant.*
- *The Appellant filed Company Petition 221/2012 before the Delhi High Court for winding up of the Respondent Company. Before the Learned Single Judge, the Respondent Company made an offer to deposit amount of Rs. 2.5 Crores, the Appellant company*

claimed before the Company Judge that amount payable is much more than Rs. 250 Lakhs. Learned Company Judge vide its Judgment dated 22nd May, 2014 dismissed the company petition against which an Appeal being CO. APPL No. 41/2014 was filed by the Appellant which too was dismissed by the Judgment and Order dated 2nd March, 2016 by Division Bench of Delhi High Court.

- *A meeting was held on 12.10.2018 between Appellant and Respondent Company where an agreement was arrived for disinvestment of the mortgaged property of the Respondent Company. Appellant and Respondent Company entered into a Settlement Agreement dated 27th August, 2019 whereby it was agreed between the parties to sell the mortgaged property and distribute the realised value as per settlement agreement between the parties.*
- *Respondent Company vide Email dated 26th July, 2021 cancelled the settlement agreement. On 01.10.2021, the Appellant Company filed Section 7 Application against the Respondent Company claiming an amount of Rs. 1438.95 Crores till 30th June, 2021. Date of Default mentioned in Section 7 Application was 26th July, 2021 which was a date when Settlement Agreement was cancelled by the Respondent Company.*
- *In Section 7 Application, Appellant has given the details beginning from sanctioning the said loans by the IDBI on 11.09.1996 and details of proceedings before the DRT and Delhi High Court, Detail of Company Petition filed by the Appellant and other litigations. The Adjudicating Authority by the Impugned Order dismissed the Section 7 Application as barred by time. The Adjudicating Authority in the Impugned Order held that after notice of winding up petition was given by the Appellant, Reply was given by the Respondent Company on 14.01.2011 and the Settlement Agreement between the parties was entered on 27th August, 2019, limitation of 3 years expired before entering into settlement agreement and there was no acknowledgement after14.01.2011 hence the case of the Appellant that the date of default is 26th July, 2021 cannot be accepted and Section 7 Application was dismissed as barred by time.*
- *The Order was passed by the Adjudicating Authority without issuing notice to the Corporate Debtor.*

X **X** **X**

20. *The acknowledgement of debt in the balance sheets from 1998-99 is continuous. Notes to the account and the Director's Report/Statement at best can be treated to be account of litigation emanating from such date. We have noticed that in the notes to the account and the Director's Statement/Report, it has been categorically mentioned that Company failed to repay the loan. In the Financial Year 2020-21, there is reiteration of credit facility availed by the Company from the IDB. The assignment in favour of Appellant has also been noticed in the notes to the account and director's statement. The notes to the account and director's report has repeatedly referred to that liability is limited to Rs. 250 Lakhs which is on the strength of Order passed in the Company Petition filed by the Appellant where Company Court directed the Respondent to deposit amount of Rs. 250 Lakhs in the Court which amount was deposited. We need to notice the Judgment of Learned Single Judge dated 22.05.2015 by which Company Petition filed by the Appellant was ultimately dismissed. It is useful to refer to last paragraph 18 of the Judgment which is to the following effect:*

> *"18. In view of the above, the present petition is dismissed. The Registry is directed to refund a sum of Rs.250 lacs along with interest, if any, to the respondent. The title documents deposited by the petitioner be also returned to the petitioner. It is further clarified that neither this order nor anything stated during the present proceedings should be construed to mean that the petitioner has confined its claim only to a sum of Rs. 250 lacs and interest thereon. Similarly, neither this order nor the present proceedings should be construed to mean that the respondent has given up its counter claims against IDBI."*

21. *When the Company Petition was dismissed with the observation as observed, we fail to see that how the Respondent can contend that claim of the Appellant is limited to only Rs. 250 Lakhs.*

22. *Be that as it may, in the present Appeal, we are only concerned with the question as to whether the Application was barred by limitation.*

23. *After perusing the relevant balance sheets and director's report, we are satisfied that balance sheets contain an acknowledgement of debt and the mere fact that details of litigation emanating from the loan and subsequent events are mentioned in the notes to the account and the director's report does not denude the value of the balance sheets for purposes of Section 18 of the Limitation Act.*

24. *We also refer to Judgment of this Tribunal in C.A. (AT) Ins. No. 991 of 2020,* ***Asset Reconstruction Company India Limited Vs. Uniworth Textiles Limited,*** *decided on 10th July, 2023 where this Tribunal had occasion to consider the balance sheets for purposes of finding out acknowledgement under Section 18 of the Limitation Act. This Tribunal also looked into the Director's Report. This Tribunal in the said Judgment has after noticing the Directors Report and certain disputes claimed by Corporate Debtor, made following observations:*

> *"Therefore, it may be inferred that only during the financial Year 2014-15 the Directors clearly disputed the debt of the Appellant, however in prior Balance Sheets no dispute was raised. In subsequent to Balance Sheets, the mention regarding their intent for resolution with dispute was indicated and in the Balance Sheet of 2018-19 no apparent dispute was recorded regarding the debt. From the entire series of record of such financial balance sheets from 2007-2008 to 2017-18 it can be presumed that the Corporate Debtor intended from time to time to acknowledge the debt in the Balance Sheet, however we cannot ignore the fact that in 2014-15, 2015-16 and 2016-17, the Corporate Debtor has disputed claims. On overall basis out of 13 Balance Sheets from 2006-07 to 2018-19, apparently in the three Balance Sheets, disputes were recorded as noted above and based on this, in balanced manner and keeping commercial/judicial fairness, such denial of acknowledgment cannot be taken as stout dispute regarding debt which would tantamount to absolute and continued denial of acknowledgments of debt by the Corporate Debtor. Keeping in view the ratio decidendi of* ***Bishal Jaiswal*** *(Supra), therefore, in light of this detailed analysis, this Appellate Tribunal has to consider that there were acknowledgements of due in the Balance Sheets and the acknowledgement letter of the Corporate Debtor which would extend the limitation period, in terms of Section 18 of Limitation Act, 1963."*

X X X

29. *In view of the foregoing discussions and conclusions, we are of the view that the Adjudicating Authority committed error in rejecting Section 7 Application filed by the Appellant as barred by time. The Application filed by the Appellant was not barred by time there being continuous acknowledgment in their respective balance sheets of the Corporate Debtor which acknowledgment was within the meaning of Section 18 of the Limitation Act extending the period*

of limitation by fresh period of limitation by each acknowledgment. In result, we allow the Appeal, set aside the Order of the Adjudicating Authority dated 06.06.2022. We revive the Section 7 Application before the Adjudicating Authority to be heard afresh and decided in accordance with law. We further grant three weeks' time to the Corporate Debtor to file its Reply to Section 7 Application. The instant Appeal is allowed to the above extent. Parties shall bear their own costs."

21. After the aforementioned order passed by Hon'ble NCLAT on 18.09.2023, the matter was listed before this Tribunal on 21.11.2023, when it could not be taken up for hearing for want of time. Later on 22.11.2023, since the 3 weeks' time to CD to file reply was already over we granted further one week time to it to file its reply, if any. The order dated 22.11.2023 reads thus:-

*"**RA-188/2023:** In the wake of the order dated 18.09.2023 passed by the Hon'ble NCLAT in Company Appeal (AT) (Ins) No. 948/2022, **the present application is allowed. Let the CP-IB-79/ND/2022 be listed for consideration on admission.***

Three weeks' time granted by the Hon'ble NCLAT in terms of the order dated 18.09.2023 (ibid) has already expired. Still, by way of sheer indulgence, a further one week's time is granted to the CD to file its reply, if any."

22. Subsequently on 09.01.2024 one last opportunity was given to Financial Creditor to file his Rejoinder. The order dated 09.01.2024 reads thus:-

*"**RA-188/2023:** As can be seen from the order dated 22.11.2023, the RA188/2023 could be allowed and the Company Petition (IB)-79/ND/2022 was restored to its original position.*

In the wake, the Court Officer and the Registry are directed to ensure that the application is not displayed as pending in any future cause list.

__IB-79/ND/2022:__ As prayed by Mr. Abhishek Anand, Ld. Counsel appearing for the Applicant, last opportunity is granted to file rejoinder within one week."

23. On 06.02.2024, the counsels for both the parties were not prepared with their submissions to be put forth in the matter thus the hearing was deferred to 06.02.2024. The order reads thus:-

> *"It is quite unfortunate that Counsels for both the parties are not prepared with their submissions to be put forth in the matter. At their request and in the interest of justice the hearing is deferred to 08.02.2024."*

24. Though in the order dated 06.02.2024, the presence of the counsels appearing for the Respondent is not indicated, but Mr. Abhishek Singh, Ld. Counsel appearing for the corporate debtor fairly admitted that Mr. Karunesh Tandon was virtually present with the Corporate Debtor. On 08.02.2024, when the matter came up for hearing, a plea was taken on behalf of the corporate debtor that Mr. Karunesh Tandon, Ld. Counsel was having shoulder pain for 3 months, thus was admitted in hospital. In the wake, the hearing was deferred for today i.e. 22.02.2024 i.e. the day coming after 2 weeks of 08.02.2024. Here it would not be out of context to mention that Section 7(4) of IBC 2016 i.e. a statutory provision clearly stipulate that this Tribunal should take its decision regarding admission or rejection of an application within 14 days. May be Hon'ble Supreme Court could take a view that the timeline is not binding on this Tribunal, but the orders passed by Hon'ble Supreme Court may not be construed that the statutory provision incorporated in IBC 2016 should be completely ignored. The concession made by Hon'ble Supreme Court available to this Tribunal, need to be used in exceptional circumstances and not as a routine practice. Having our concern regarding the spirit of the statute (IBC 2016), we were reluctant to adjourn the matter. The order dated 08.02.2024 passed by this Tribunal reads thus:-

> *"On 06.02.2024, when both the parties were not prepared to put forth their submission in the matter, we reluctantly deferred the hearing for today. The order passed on 06.02.2024 reads thus:-*
>
> > *"It is quite unfortunate that Counsels for both the parties are not prepared with their submissions to be put forth in the matter. At their request and in the interest of justice the hearing is deferred to 08.02.2024."*

We are not inclined to give adjournments in the petitions under Section 7 & 9 of IBC 2016 for the reason that the statute i.e. the IBC stipulate that this Tribunal should decide viz., either to admit or reject a petition filed under Section 7 of IBC, 2016 within 14 days. Today, when the petition was listed for hearing, Mr. Rahul Chauhan Advocate submitted that the Ld. Counsel for the CD was having shoulder pain for 3 months, thus he got hospitalised on 07.02.2024. The document which he could produce before the Tribunal is receipt of deposit of Rs. 50,000/- i.e. an advance amount with Aakash Healthcare Super Speciality Hospital.

The plea raised by the Ld. Counsel for the corporate debtor was opposed by Mr. Sumant Batra the Ld. Counsel for the Financial Creditor. He could draw our attention to pages 31, 33, 34, 35 and 106 of the Rejoinder to espouse that the signatory of the reply viz., Ms. Mausami Bhattacharjee has been indulging in forgery, as her signatures on the documents available on record at aforementioned pages differ from each other. He could also refer to AnnexureR4 to Rejoinder which is the order passed by Hon'ble Uttarakhand High Court in Criminal Writ No. 1253/2013 in Santosh Kumar Bagla vs. The Senior Superintendent of Police & Others. According to him the order reflect that Ms. Mausami Bhattacharjee was involved in the activities of forging the Court orders. Para 3, 4 & 65 of the order read out by him reads thus:-

> *"3. Brief genesis of the proceedings of the present writ petition, emanates from a letter dated 07.09.2013, which was addressed to the Registry of this Court; by one Mr. Santosh Kumar Bagla, who claimed himself to be one of the Director, of one of the construction company, namely Anghaila Housing Pvt. Ltd. (hereinafter to be called as Housing Company), who in his correspondence dated 07.09.2013, made to the Registrar General of this Court, had intimated that in a proceedings, which were then being conducted before* ***the Company Law Board, Principal Bench, New Delhi; by way of Company Petition No.70 of 2003,*** *three judgments/orders allegedly said to have been rendered by this High Court, were placed on record of the proceedings before Company Law Board, on which reliance was placed by his adversaries, which were said to be fraudulently manufactured judgments, as they were not even available on the original records of the respective writ petitions. The judgments, which have been referred thereto in the complaint, are detailed hereunder:-*
>
> *A. Judgement dated 14.10.2004, as alleged, that it was rendered in* ***Writ Petition (M/B) No.507 of 2003 M/s Anghaila***

Housing (Pvt.) Ltd. & Another vs. State of Uttaranchal & others.

B. Judgment dated 27.08.2004 as allegedly rendered in ***Writ Petition (M/B) No.1224 of 2003 M/s Anghaila Housing (Pvt.) Ltd. & Another vs. State of Uttarakhand & Ors.***

C. Judgment of 26.07.2005, as allegedly rendered in ***Writ Petition (M/S) No.847 of 2004 State of Uttaranchal & Another vs. Anghaila Housing Pvt. Ltd. & Ors.***

4. In the complaint thus submitted by the complainant, before the Registrar General of this Court, he had raised an allegation that these judgments, which were non-existent judgments, on the original records of the respective writ petitions and they were manufactured fraudulently in connivance with, the following persons, named in the complaint; namely:- i. Mausumi Bhattacharjee, ii. Dharam Pal Yadav, iii. Kali Ram Yadav, iv. Naresh Kumar, V. Awdhesh Kumar,

and with some of the staff of the Registry of this Court, the possibility of which cannot be completely ruled out.

65. In view of what has been dispelled by this Court in the aforesaid judgment based upon the wider principle laid down by the Hon'ble Apex Court, this Court is of a considered view that after scrutinizing the respective order sheets of the three writ petitions referred to hereinabove, as well as the correspondences made by office of the Registrar General of this Court, do not leave an iota of doubts that the judgment which has been complaint of to be relied, are non-existing judgments on record and since the police investigation which was initiated at the hands of the office of Registrar General of this Court, had not diligently pursued the cause by filing a protest petition, upon intimated submission of charge sheet and when apparently a cognizable offence is said to be made out from the records, which has been already discussed above, this Court is of the view that be it whatsoever, whosoever, may be involved upto what higher ranking he possesses, he cannot be spared at all, at any cost to malign the prestige of the institution by preparation of a fraudulent judgments, which may have a very wide social bearing of dispelling the confidence of the public at large, if such an illegal and inacceptable act is permitted to be persuaded by the officials of the Registry or by anyone else who is involvement in it and particularly when a non existing judgments of the three writ petitions of which the certified copy has been issued and had been relied with before the Company Law Board."

With reference to the aforementioned documents, Mr. Sumant Batra argued that the stand taken on behalf of the corporate debtor does not *inspire any confidence and once Mr. Tandon was present before this Tribunal on 06.02.2024 and according to the Ld. Counsel for the corporate debtor, his shoulder was paining for 3 months and he was still appearing before the Courts, it is not understood that when the present petition was kept for hearing today, how Mr. Tandon got admitted in hospital only on 07.02.2024. He opposed the adjournment sought on behalf of the CD with vehemence.*

We are really dismayed and appalled with the development in the matter. It is quite unfortunate that our concern to adhere to the statutory time limit mentioned in the Code to decide the applications filed under Section 7 & 9 of IBC 2016 are not appreciated at all. The corporate debtor, instead of arguing the case on merit is simply interested to delay the process. Though the Ld. Counsel appearing for the corporate debtor could submit that the matter is received on being remanded by Hon'ble Appellate Tribunal, but we see that even the order passed by Hon'ble Appellate Tribunal is dated 18.09.2023. In such proceedings, where the total period available to the Tribunal to take a decision regarding admission or rejection of an application is 14 days, the period from 18.09.2023 to 07.02.2024 is too long.

Though the receipt of deposit of Rs. 50,000 with the Aakash Healthcare Super Speciality Hospital is produced before us, but same is no ground for adjournment, Mr. Karunesh Tandon, who as per stand taken by counsel for CD was having shoulder pain for 3 months chose to get admitted in Hospital only on 07.02.2024, when on 06.02.2024 we had fixed the present matter for hearing today, thus the plea regarding his ailment hardly inspire any confidence. Nevertheless, only in the interest of justice we defer the hearing to 22.02.2024.

The corporate debtor would also explain the stand of Ms. Mausami Bhattacharjee regarding the submissions made by Mr. Sumant Batra on the next date of hearing. Ms. Mausami Bhattacharjee is directed to participate in the proceedings either physically or virtually. It is for the corporate debtor to arrange the counsel to represent its stand on the next date of hearing and no request for adjournment would be entertained at any cost."

25. Today again when the matter came up for hearing, Mr. Abhishek Singh, Ld. Counsel appearing for the corporate debtor requested for further adjournment, only on the ground that Mr. Karunesh Tandon is not well enough to argue the matter. The request for adjournment is opposed by Mr.

Ramji Srinivasan, Sr. Advocate with vehemence. He could draw our attention to ultimate paragraph of order dated 08.02.2024, which clearly reflect that it was for corporate debtor to arrange the counsel to represent its stand on the next date of hearing (i.e. today) and no further request for adjournment would be entertained at any cost. It would not be a happy practice, if we start disregarding our own orders. We may also be not oblivious of the fact that on last date of hearing when the FC was represented by Mr. Sumant Batra, today the FC could engage Mr. Ramji Srinivasan Sr. Advocate. There was nothing to prevent the corporate debtor also from engaging another advocate to represent its stand. The approach of the corporate debtor is leaving us to believe that its only intention is to ensure that the application is not taken up for hearing. We may also be not oblivious of the spirit of the order passed by Hon'ble NCLAT, in terms of which 3 weeks' time was granted to corporate debtor to file it's reply. In the wake, we proceed to examine the application, with reference to the provisions of Section 7(5) of IBC 2016, read with Regulation 8 of IBBI (CIRP) Regulations 2016.

26. As can be seen from the averments made in Part-IV of the petition, there is debt and default in payment of the same. Part-IV of the application reads thus:-

PART-IV

Particulars of Financial Debt		
1	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT.	The Debt amounting to Rs.28.95 Crores (Rupees Twenty-Eight Crores Ninety-Nine Lakhs Only) was assigned by Kotak Mahindra Bank to the Financial Creditor vide Registered Assignment Deed dated 16.04.2008.
2	AMOUNT CLAIM TO BE IN DEFAULT AND THE DATE OF WHICH THE DEFAULT OCCURRED.	**Amount due** - Rs. 1438.95 Crores (Rupees One Thousand Four Hundred Thirty Eight Crores and Ninety Five Lakhs Only) including Principal Amount alongwith pendente lite interest @ 21% p.a and Liquidated damages @ 5% compounded quarterly, calculated up till 30.06.2021. Copy of the working

		computation sheet is annexed herewith as **Annexure-6.** Date of default: 26.07.2021 a) The Financial Creditor and the Corporate Debtor had entered into a Settlement Agreement dated 27.08.2019 whereby, it was agreed between the parties to sell the mortgaged property and distribute the realized value as per the Settlement Agreement dated 27.08.2019 between the parties. Further, the Corporate Debtor cancelled the Settlement Agreement dated 27.08.2019 vide email dated 26.07.2021 to which the Financial Creditor brought to the notice of the Corporate Debtor that the Financial Creditor is aware of the malafide intentions of the Corporate Debtor including but not limited to disposing off the assets mortgaged with the Financial Creditor. It is submitted that the email dated 26.07.2021 is vague and the same is merely an attempt to escape the liability to repay the debt due to the Financial Creditor. Copy of the Settlement Agreement dated 27.08.2019 along with email dated 26.07.2021 and reply/email dated 04.08.2021 is annexed herewith and marked as **Annexure-7(Colly).**

b) Further, the Financial Statements of the Corporate Debtor acknowledge the debt due & payable to the Financial Creditor. It may be noted that the Corporate Debtor has unlawfully reduced the amount of debt to Rs. 250.00 Lakhs in the financial statement for the financial year ending on 31.03.2020 on the pretext of one time settlement with Financial Creditor. However, the same is incorrect and wrong since no such settlement has been arrived between the parties.

Copy of the Financial Statements of the Corporate Debtor for the financial year 2017-18, 2018-19 and 2019-20 is annexed herewith as **Annexure-8(Colly)**..

c) The default of debt incurred on account of the following transactions:

i. The Corporate Debtor took a Rupee Loan from the IDBI for an amount of Rs. 367.00 Lakhs (Rupees Three Hundred Sixty-Seven Lakhs).

A copy of the Rupee Loan Agreement is annexed herewith as **Annexure-9.**

ii. The Corporate Debtor took a Foreign Currency Loan from the IDBI for an amount of DM 779,105 (German Deutsche Mark Seven Lakhs Seventy-Nine Thousand One Hundred and Five only).

A copy of the Foreign Currency Loan Agreement is annexed herewith as **Annexure-10**.

iii. The IDBI assigned its claim accrued on account of the aforesaid loan agreements in favour of Kotak Mahindra Bank Limited vide a registered assignment deed dated 31.03.2006.

A Copy of the Assignment Deed dated 31.03.2006 is annexed herewith as **Annexure-11**.

iv. The Corporate Debtor filed an appeal before the Debt Recovery Appellate Tribunal (DRAT), Delhi, against the impugned order dated 12.12.2006 passed by the Hon'ble DRT, Delhi. The Hon'ble DRAT vide order dated 06.02.2007 passed a blanket stay order on all the proceedings pending before DRT.

v. Thereafter, feeling aggrieved by the order dated 06.02.2007, KMBL filed a writ petition being W.P. (C) No. 3535 of 2007 before the Hon'ble High Court of Delhi which was allowed by the Hon'ble High Court vide order dated 23.05.2007 and pursuant thereto the Hon'ble DRAT, Delhi directed the matter to remand back to DRT for adjudication.

vi. That Kotak Mahindra Bank Limited further assigned its claim accrued on account of the aforesaid Assignment Deed dated 31.03.2006, in favour of the Financial Creditor vide an Assignment Deed dated 16.04.2008.

A Copy of the Assignment Deed dated 16.04.2008 is annexed herewith as **Annexure-12.**

vii. The Financial Creditor served a letter dated 23.12.2010 under Section 434(1) (a) of the Companies Act, 1956 to the Corporate Debtor apprising it with the fact that the Financial Creditor has the right to claim the debt owed, due & payable to Kotak Bank by the Corporate debtor.

A Copy of the Letter dated 23.12.2010 is annexed herewith as **Annexure-13.**

viii. Further, the Corporate Debtor in its reply dated 14.01.2011 to the said legal notice dated 23.12.2010 admitted its liability of Debt but took sham defense of not accepting the assignee in place of the assignor, for not making repayment of its debt.

ix. Thereafter, in the year 2012, the Financial Creditor instituted a winding up petition against the Corporate Debtor u/s 433(e) & (f) of the Companies Act, 1956, however, the same was dismissed vide order dated 22.05.2014 passed by the Hon'ble High Court of Delhi.

A Copy of the order dated 22.05.2014 passed by the Hon'ble High Court of Delhi is annexed herewith and marked as **Annexure-14.**

x. The Financial Creditor being aggrieved by the dismissal of its winding up petition CO.PET.221/2012, filed a Company Appeal No. 41 of 2014 under Section 483 of Companies Act, 1956 before the Hon'ble High Court of Delhi against the impugned judgment dated 22.05.2014 passed by the Learned Single Bench on 02.08.2014. Thereafter the Hon'ble Division Bench after hearing the parties dismissed the Company Appeal vide impugned order dated 02.03.2016.

A Copy of the order dated 02.03.2016 passed by the Hon'ble High Court of Delhi is annexed herewith and marked as **Annexure-15.**

xi. That, in 2016 the Corporate Debtor filed Miscellaneous Application being MA/21/2016 before the Hon'ble DRT, Delhi seeking directions and even thereafter subsequent Miscellaneous Application was also filed before the Hon'ble DRT, Delhi bring MA/55/2017 seeking for directions in the main matter OA – 445/1998 and from the information available on the portal of Debt Recovery Tribunal the matter is still pending for adjudication before the Hon'ble DRT, Delhi. Subsequently the Corporate Debtor has filed applications before Hon'ble High Court of Delhi seeking for further directions in the matter as well.

xii. Thereafter, on 12.10.2018 a meeting was held at Jones Lang LaSalle Inc.(JLL), Gurgaon between the Corporate Debtor and the Financial Creditor for the disinvestment of the mortgaged property of the Corporate Debtor, and it was agreed to sell the said property to M/s Godrej and sharing

			the profit/loss in the ratio 50:50 after deductions through as per the minutes of meetings dated 12.10.2018. However, no steps therefore have been followed by the Corporate Debtor till date. Hence, the present Petition. A copy of the minutes of meeting held on 12.10.2018 between the Financial Creditor and the Corporate Debtor at JLL Gurgaon is annexed herewith and marked as **Annexure-16.**

27. The Plea of limitation espoused on behalf of the corporate debtor before this Tribunal, which was accepted on 06.06.2022 has since been nixed by Hon'ble Appellate Tribunal, (ibid). In the wake of the order passed by Hon'ble Tribunal we need not to delve into the issue of limitation again and again. Though the Ld. Counsel for the corporate debtor (Mr. Abhishek Singh) kept on insisting that the hearing should be deferred, but he did not advance any argument on merits. He also emphasized that the corporate debtor should get a fair opportunity of hearing. We are unable to understand that when after the order passed by Hon'ble NCLAT, the hearing in the present proceedings have been deferred 5 times, how the corporate debtor can say that it did not get fair opportunity to represent its case. On 08.02.2024, it was made clear to the corporate debtor that it may engage another counsel, (if Mr. Karunesh Tandon was not fit enough to argue the matter). At this stage we deem it appropriate to make it clear that when we passed order dated 08.02.2024, we did not intend to observe anything adverse either to Mr. Karunesh Tandon Advocate or qua the corporate debtor. We passed the detailed order, only to emphasize that it was not possible for us to entertain the request for adjournment. We recorded reasons in the order only for such limited purpose and not to take

any adverse view regarding the corporate debtor or Mr. Karunesh Tandon Advocate.

28. Even though Mr. Abhishek Singh, Ld. Counsel for the corporate debtor chose not to open his argument, in the interest of justice we referred to the reply filed by the CD. The salient contention espoused in the reply filed on behalf of the CD are:- (i) the present petition is preferred as debt recovery proceeding; (ii) the petition is barred by limitation; (iii) there has been a chain of a litigation regarding the amount of loan and the proceedings before debt of recovery could be dismissed; and (iv) when the settlement agreement dated 27.09.2019 was entered into between the parties, the Financial Creditor was not in existence.

29. Besides the aforementioned salient contention, the corporate debtor has narrated the factual events developed over period of time and has disputed the amount of default.

30. As far as the plea of limitation, and the order passed by Hon'ble DRT rejecting the application filed by the FC are concerned, in the wake of the settlement agreement dated 27.08.2019, the order passed by Hon'ble NCLAT (ibid) and the balance sheets right from the year 1988 till 2022 placed on record which indicates acknowledgement of debt by the corporate debtor, without any break, far less the break of over 3 years, the plea can not be accepted. Regarding the issue of striking off the corporate debtor from the Register of Companies, a reference may be made to Section 250 of the Companies Act 2013. In terms of the said provision, even when a company is striked off from the Register of Companies, it has all entitlement to realise the amount of due payable to the company. The Section reads thus:-

> "***Section 250. Effect of company notified as dissolved.—*** *Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company."*

31. In the wake of the aforementioned provisions alone, the plea espoused on behalf of the corporate debtor regarding validity of the settlement deed on account of the FC being striked off from the Register of Companies can not be countenanced. Besides on 26.07.2021, in terms of its e-mail, the corporate debtor had acknowledged and authenticated the settlement entered into between the parties. In reply to the said e-mail given by the FC (ibid), the factual position was narrated and the plea that the FC was striked off from the Register of Companies was duly met. As far as the question of calculation of amount of loan is concerned, in the present proceedings what we need to see is that the amount of default meet the threshold limit of Rs. 1 crore. Thus, we are not expressing any opinion about total amount defaulted to be paid by the corporate debtor to the Petitioner. It is beyond our jurisdiction to record any finding on such factual dispute. Indubitably, the corporate debtor has acknowledged the default in repayment of Rs. 250 lakhs (2.5 Crores) which is above the threshold limit mentioned in Section 4 of IBC 2016.

32. As is apparent from the Section 7(5)(a) of IBC 2016, while considering the admission of an application filed under Section 7(1) of IBC 2016, what this Tribunal need to see is that there is debt and default in repayment of the same, the application is complete and no disciplinary proceedings are pending. The Section 7(5) of IBC 2016 reads thus:-

"(5) Where the Adjudicating Authority is satisfied that –

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority."

33. The Regulation 8 of IBBI (CIRP) Regulations, 2016 refer to the documentary evidence required to be seen as proof the debt. The Regulation reads thus:-

> ***"8. Claims by Financial Creditor.—****(1) A person claiming to be a financial creditor, other than a financial creditor belonging to a class of creditors, shall submit claim with proof] to the interim resolution professional in electronic form in Form C of the [Schedule-I]:*
>
> *Provided that such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee.*
>
> *(2) The existence of debt due to the financial creditor may be proved on the basis of –*
>
> *(a) the records available with an information utility, if any; or*
>
> *(b) other relevant documents, including –*
>
> *(i) a financial contract supported by financial statements as evidence of the debt;*
>
> *(ii) a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;*
>
> *(iii) financial statements showing that the debt has not been [paid]; or*
>
> *(iv) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any."*

34. As can be seen from the aforementioned Regulation, amongst others, the existence of debt due to the FC may be proved on the basis of financial contracts supported by financial statement as evidence of debt. In the present case apparently there were a financial contracts entered into between the parties (supra). The Financial Creditor has also placed on record the Balance Sheets, showing acknowledgement of the debt. Here we may also make it clear that the provisions contained in Regulation 8 of IBBI (CIRP) Regulations, 2016 are to prove the financial debt by the claimants before the RP/IRP and not for the purpose of filing the petition under Section 7(1). Nevertheless, the requirement of evidence mentioned in the said provision can safely be relied

upon by this Tribunal while adjudicating an application filed under Section 7 (1) of IBC 2016.

35. It would not be out of context to refer to the Judgment of Hon'ble Apex Court in **M. Suresh Kumar Reddy versus Canara Bank and Ors.** in Civil Appeal No. 7121/2022 which stipulate that the limited scope while examining the application filed under Section 7 of IBC, 2016 is to see that whether there is debt and default in repaying the same. Para 10 of the order passed by Hon'ble Supreme Court reads thus:-

> "***10.*** *Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section-7. Default is defined under sub-section 12 of Section 3 of the IB Code which read thus:*
>
> > ***"3. Definitions:*** *- In this Code, unless the context otherwise requires,-*
> >
> > *.. .. ..*
> >
> > ***(12)*** *"default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;"*
>
> *Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a Corporate Debtor. In such a case, an order of admission under Section 7 of the IB Code must follow. If the NCLT finds that there is a debt, but it has not become due and payable, the application under section 7 can be rejected. Otherwise, there is no ground available to reject the application."*

36. In the present case indubitably, the settlement deed entered into between the parties and the balance sheets qua the corporate debtor placed on record established that there is debt and default in repaying the same.

37. It would not be out of place to note that the cancellation of settlement deed by the corporate debtor is apparent default committed in repaying the amount of debt.

38. In the wake of the aforementioned and the spirit of Section 14 of IBC 2016, **we are left with no option but to admit the present petition. Ordered accordingly.**

39. **In the wake, moratorium as provided under Section 14 of IBC, 2016 is declared qua the CD** and as a necessary consequence thereof the following prohibitions are imposed, which must be followed by all and sundry:

(a) The institution of suits or continuation of pending suits or proceedings against the Respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the Respondent any of its assets or any legal right or beneficial interest therein;

(c) Any action to foreclose, recover or enforce any security interest created by the Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Respondent."

40. As proposed by the Petitioner, Mr. Vikram Bajaj, having Registration No: IBBI/IPA-002/IP-N00003/2016-2017/1003 and E-mail: bajaj.vikram@gmail.com is appointed as IRP, subject to the condition that no disciplinary proceeding is pending against him and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. It is further ordered that:

Mr. Vikram Bajaj, IRP (Registration No IBBI/IPA-002/IP-N00003/2016-2017/1003) shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016 read with extend provisions of IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016.

41. The Petitioner is directed to deposit Rs. 2,00,000/- only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

42. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Petitioner /Financial Creditor, the Respondent/Corporate Debtor and the IRP mentioned above.

43. In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their records.

44. It goes without saying that the present order would be subject to outcome of the appeal, if any, preferred by the Corporate Debtor from the order of Hon'ble NCLAT, before Hon'ble Supreme Court.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)